SUPREME COURT OF THE UNITED STATES.

No. ~~207~~. 43. 8.

CHARLES W. STATHAM, WILLIAM T. SMITHSON AND JAMES G. HAMILTON, PL'FFS IN ERROR,

vs.

WILLIAM W. MANN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

G. S. GIDEON, Printer, No. 511 Ninth street, Washington, D. C.

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INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Copy appeal bond	3	2
Style of court	5	3
Parties	5	3
Capias ad respondendum	6	3
Marshal's return and appearance of def't	7	4
Nar	8	4
Rule plea	11	5
Bill of particulars	12	6
Pleas by defendant	13	6
Gen'l dem'r to 8th plea	24	11
" 9th "	26	12
" 10th "	28	13
Demurrers withdrawn, and issue joined	32	15
Venire facias	32	15
Jury	34	16
Verdict for defendant	34	16
Judgment on verdict	34	16
Memorandum	35	16
Plaintiffs' 1st bill of exceptions	35	16
" 2d "	38	17
" 3d "	39	18
" 4th "	40	18

GIDEON, Print.

	Original.	Print.
Plaintiffs' 5th bill of exceptions	41	19
" 6th "	42	19
" 7th "	44	20
" 8th "	45	20
" 9th "	46	21
" 10th "	47	21
" 11th "	48	22
" 12th "	48	22
Depo. of Alex'r M. Hamilton, ref'd to in pl'ffs' 1st bill of exceptions, page 36	50	22
" " ref'd to in pl'ffs' 2d bill of exceptions, p. 38....	62	27
" " ref'd to in pl'ffs' 3d bill of exceptions, p. 38....	71	30
Deposition of Alanson Webster	79	34
" of Jesse C. Daun	83	35
" of Wm. O. Brown	87	37
Clerk's certificate	91	39

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the judges of the Circuit Court of the District of Columbia sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, between Charles W. Statham, William T. Smithson, and James G. Hamilton, plaintiffs, and William W. Mann, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December inst., in the said Supreme Court, to be then and there had and held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court.

Issued this 1st day of December, 1858.

JNO. A. SMITH, *Cl'k.*

Citation.

DISTRICT OF COLUMBIA, *to wit.*

The United States of America to William W. Mann, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December *next*, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia for the county of Washington, wherein Charles W. Statham, William T. Smithson, and James G. Hamilton, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf.

Witness the Honorable James Dunlop, chief judge of the circuit court of the District of Columbia, this first Monday of December, 1858.

JAMES DUNLOP.

Service acknowledged.

JOS. H. BRADLEY,
Att'y for Mann.

Copy Appeal Bond.

Know all men by these presents, that we, Charles W. Statham, William T. Smithson, and James G. Hamilton, John S. Edwards, and Charles Wilson, are held and firmly bound unto William W. Mann, in the full and just sum of two hundred dollars, lawful money; to which payment well and truly to be made and done we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this first day of December, eighteen hundred and fifty-eight.

Whereas lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit depending in the said court, wherein the said Charles W. Statham, William T. Smithson, and James G. Hamilton, were plaintiffs, and the said William W. Mann was defendant, judgment was rendered against the said plaintiffs; and they having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said William W. Mann, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on first Mon of December instant:

Now the condition of the above obligation is such, that if the said Charles W. Statham, William T. Smithson, and James G. *Robinson* shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to be and remain in full force and virtue in law.

CHAS. W. STATHAM, [SEAL.]
WILLIAM T. SMITHSON, [SEAL.]
JAMES G. HAMILTON, [SEAL.]
JOHN S. EDWARDS, [SEAL.]
CHAS. WILSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
C. A. ZIMMERMAN,
GEORGE COOK,
U. WARD.

(Approved by the court.)

True copy.
Test: JNO. A. SMITH, *Cl'k.*

Style of Court.

DISTRICT OF COLUMBIA, *to wit.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of January, being the eighteenth day of the same month, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second—

Present, James Dunlop, chief judge; the Hon'ble James S. Morsell and Wm. M. Merrick, ass't judges; Jonah D. Hoover, esq., marshal; John A. Smith, clerk.

Parties.

In the records of proceedings of said court, amongst others are the following, to wit:

STATHAM, SMITHSON & Co.
vs.
WILLIAM W. MANN.

Be it remembered, to wit, on the 9th Dec., 1854, the said plaintiffs, by W. D. Davidge, esq., their attorney, prosecuted and sent forth the following writ against the said defendant, to wit:

Capias ad Respondendum.

DISTRICT OF COLUMBIA, *to wit.*

The United States of America to the Marshal of the District of Columbia, greeting:

We command you that you take William W. Mann, late of Washington county, if he shall be found within the county of Washington, in your said District, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county of Washington, at the city of Washington, on the fourth Monday of March next, to answer unto Charles W. Statham, William T. Smithson, and James G. Hamilton, in a plea of trespass on the case, and so forth.

Hereof fail not at your peril, and have you then and there this writ.

Witness William Cranch, esquire, chief judge of our said court, at the city of Washington, the 8th day of December, anno Domini one thousand eight hundred and fifty-four.

Issued the 9th day of December, 1854.

JNO. A. SMITH, *Cl'k.*

March Term, 1855.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty-five, and the day of the

return of the aforegoing writ, come again into the circuit court here the said plaintiffs, by their attorney aforesaid; and the marshal of the District of Columbia, to whom the said aforegoing writ was, in form aforesaid, directed, makes return thereof to the court here, thereon endorsed to wit: "Cepi. J. D. Hoover, marshal."

Marshal's Return and Defendant's Appearance.—Rule Nar and Imparlance.

And the said defendant being called, appears in court here, by R. H. Gillet, esq., his attorney; whereupon, on motion of the said defendant, by his attorney aforesaid, it is ruled by the court here that the said plaintiffs declare against the said defendant in the plea aforesaid, or judgment by the court here will be rendered against them in default thereof; thereupon the said plaintiffs, by their attorney aforesaid, pray leave of the court here to imparle until the third Monday of October next, and then to declare against the said defendant in the plea aforesaid, and to them it is granted. The same day is given to the said *plaintiffs* also.

At which mentioned third Monday of October, in the year of our Lord one thousand eight hundred and fifty-five, to which said day the said plaintiffs had leave to imparle and then to declare against the said defendant in the plea aforesaid, come again into the circuit court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendant, by his atttorney aforesaid; and the said plaintiffs, by their attorney aforesaid, declared against the said defendant in the plea aforesaid, in form following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington County, to wit.

William W. Mann, late of the county aforesaid, was attached to answer unto Charles W. Statham, William T. Smithson, and James G. Hamilton, trading under the name and firm of the Farmers and Mechanics' Bank of Statham, Smithson & Company, in a plea of trespass on the case, and so forth.

And whereupon the plaintiffs, by Davidge & Ingle, their attorneys, complain that, whereas the defendant, on the twentieth day of March, in the year eighteen hundred and fifty-three, at the county aforesaid, was indebted to the said plaintiffs in the sum of three thousand four hundred and forty-three dollars, current money of the United States, for sundry matters and articles properly chargeable in an account, as by a particular account thereof herewith into court exhibited appears; and being so indebted, the defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and faithfully promised to the plaintiffs to pay them the aforesaid sum of money when he should be thereto afterwards required.

And whereas, also, the defendant, on the twentieth day of March, in the year eighteen hundred and fifty-three, at the county aforesaid, was indebted to the plaintiffs in the further sum of three thousand four hundred and forty-three dollars for merchandise before that time sold and delivered by the plaintiffs to the defendant at his special request; and in the further sum of three thousand four hundred and forty-three dollars for work and labor done and performed by the plaintiffs for the defendant at his special request; and in the further sum of three thousand four hundred and forty-three dollars for money by the defendant had and received for the use of the plaintiffs; and in the further sum of three thousand four hundred and forty-three dollars for money lent and advanced by the plaintiffs to the defendant at his the defendant's request; and in the further sum of three thousand four hundred and forty-three dollars for money paid, laid out, and expended by the plaintiffs for the use of the defendant at his the defendant's request.

And being so indebted, the defendant, afterwards, that is to say, on the day and year aforesaid, at the county aforesaid, in consideration thereof, undertook, and then and there faithfully promised to the plaintiffs that he, the defendant, the said several sums of money, when required, would well and truly pay to the plaintiffs.

And whereas the defendant, afterwards, that is to say, on the twentieth day of March, in the year aforesaid, at the county aforesaid, accounted with the plaintiffs of and concerning divers sums of money from the defendant to the said plaintiffs before that time due, owing then in arrear, and unpaid, and upon such accounting the said defendant was then and there found in arrear and indebted to the said plaintiffs in the further sum of three thousand four hundred and forty-three dollars; and being so found in arrear and indebted, the said defendant afterwards, that is to say, on the day and year last mentioned, at the county aforesaid, in consideration thereof, undertook, and then and there faithfully promised to pay to the plaintiffs, when thereto afterwards required, the said last mentioned sum of money.

Nevertheless the defendant, said promise in no wise regarding, the said several sums of money, or any part thereof, though often required, to the plaintiffs has not paid, but the same to pay has always refused, and still refuses, to the damage of the plaintiffs in the sum of six thousand dollars, and therefore they bring suit, and so forth.

DAVIDGE & INGLE,
For the Plaintiffs.

Rule Plea and Imparlance to March Term, 1856.—*Rule Bill of Particulars.*

Whereupon, on motion of the said plaintiffs, by their attorneys aforesaid, it is ruled by the court here that the said defendant an-

swer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; thereupon the said defendant, by his attorney aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, and to him it is granted; the same day is given to the said plaintiffs also.

At which mentioned fourth Monday of March, in the year eighteen hundred and fifty-six, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, came again into the circuit court here as well the said plaintiffs by their attorneys aforesaid as the said defendant by his attorney aforesaid; and thereupon, on motion of the said defendant, by his attorney aforesaid, it is ruled by the court here that the said plaintiffs file in this cause a bill of particulars of the claim set forth in their declaration aforesaid; whereupon the said plaintiffs, by their attorneys aforesaid, file in court here the following bill of particulars, to wit:

Bill Particulars.

Mr. William W. Mann to Statham, Smithson & Co.

Dr.

1853.			
Jan'y 25th.	To the value of certain promissory notes of different denominations from $1 to $10, made in the name of the Farmers and Mechanics' Bank, Washington city, D. C., payable on demand to the bearer, remitted to you in bulk, and for which, or the proceeds, when demanded, you failed to account.....		$2,100 00
March 8th.	To ditto.....		3,000 00
	Total.....		$5,100 00

Cr.

April 4th.	By am't rec'd pr. our draft...	$700 00	
" 13	" do. do. ...	300 00	
June 13	" cash per Mr. Hamilton...	657 00	
			1,657 00
			$3,443 00

1st Plea. And the defendant, Wm. W. Mann, by Ransom H. Gillet, his attorney, comes and defends the wrong and injury, when, &c., and says that the said plaintiffs ought not to have and

maintain *in* their aforesaid action thereof against him, because he says that he did not undertake and promise in the manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country, &c.; and the said plaintiffs in like manner, and so forth.

2d Plea. And for a further plea in this behalf, the said defendant, by leave of the court here, for this purpose, first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiffs ought not to have or maintain this aforesaid action thereof against him, because he says, that the said plaintiffs before and at the time of the commencement of this suit, to wit, at the county of Washington, aforesaid, were and still are indebted to him, the said defendant, in a large sum of money, to wit, ten thousand dollars, lawful money of the United States, for so much money due and owing to the said defendant from the said plaintiffs for so much money paid, laid out, and expended, and for the said plaintiffs, at their special instance and request; and for the like sum of money, for so much money by the said plaintiffs had and received of the said defendant, and for the like sum, for the work, labor and services of the said defendant, done, performed and bestowed, in and about the business of the said plaintiffs, and at their special instance and request; and in the like sum due from the said plaintiffs to the said defendant on a large number, to wit, two thousand instruments in writing, made and executed by the said plaintiffs, payable to the bearer thereof, then and there held and owned by the said defendant, on which there is due a large sum, to wit, three thousand dollars; and in the like sum due from the said plaintiffs to the said defendant, on two thousand written instruments, which are due and payable by the said plaintiffs to the said defendant, which said sums of money, so due and owing from the said plaintiffs to the said defendant as aforesaid, exceeds the damages sustained by the said plaintiffs, by reason of the non-performance by him, the said defendant, of the said several supposed promises and undertakings in the said declaration mentioned, and out of which said sums of money so due and owing from the said plaintiffs to the said defendant, he the said defendant is ready and willing, and hereby offers to set off and allow the said plaintiffs the full amount of the said damages, according to the form of the statute in such case made and provided. And this the said defendant is ready to verify, wherefore he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.; and the said plaintiffs do in like manner, &c.

3d Plea. And for further plea in this behalf, and by like leave of the court first had and obtained, the said defendant says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says, that after making the

said several promises and undertakings in the said declaration mentioned, and before the commencement of this suit, to wit, on the first day of January, one thousand eight hundred and fifty-four, he, the said defendant, fully paid and satisfied the said plaintiffs all and singular the said several sums of money in the said declaration specified and set forth, and this he is ready to verify. Wherefore he prays judgment, if the said plaintiffs ought to have or maintain their action aforesaid thereof against him, &c.; and the plaintiffs do the like, &c.

4th Plea. And for further plea in this behalf, the said defendant, by like leave of the court here first had and obtained, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that by an act of Congress approved the third day of March, 1817, entitled "An act to incorporate the subscribers to certain banks in the District of Columbia, and to prevent the circulation of the notes of unincorporated associations within the said District," it was among other things provided, "that from and after the fourth day of April (then) next, it shall not be lawful for any unchartered banking company, or any association, partnership or company of individuals, within the District of Columbia, to discount any notes or other securities for the payment of money, or to issue notes or bills, whether payable to order or bearer, or any other securities, promises or orders, for the payment of money, or stock; and every member, officer or agent, of any such company, or associate or partner of any such association or partnership, shall be held to be guilty of a misdemeanor, and for every such offence, upon conviction thereof, may be fined in a sum not less than one hundred dollars, nor more than five hundred dollars.

And it was further provided in and by said act, "that whosoever, as president, cashier, or agent of any such company, or as associate or partner of any such association or partnership, shall, after the fourth day of April (then) next, sign, countersign, or endorse any such note, bill, or security, contrary to the provisions of this act, shall, in addition to the aforesaid penalties, be held to be guilty of a high misdemeanor, and may be imprisoned for a period not less than three nor more than twelve months, at the discretion of a jury." And it was further provided in and by said act, "that all drafts, bills, or other securities for the payment of money discounted contrary to the provisions of this act, whether the same be payable to any such company, association, or partnership, or to any person, as agent or trustee for such company, association or partnership, or for the benefit thereof, and all contracts, bonds, deeds, penal or single bills, or other instrument, given to reimburse or indemnify any person for any payment or responsibility incurred by such person, for any debt contracted, by any dealing contrary to the true intent and meaning of this said act, shall be, and the same are hereby declared to be, utterly void to all intents and purposes."

And it was further provided in and by said act, "that if any person as president, cashier or teller, or other officer or agent, of any such banking company, or as associate or partner in any such association or partnership, shall, from and after the fourth day of April (then) next, issue or pass into circulation such note, bill, draft or other security hereby prohibited to be issued, together with every person assenting thereto, shall be deemed and taken to have incurred the penalty of this act, notwithstanding the note, bill, or other security so issued may have been signed, countersigned and endorsed before the commencement of this act."

And the said defendant further says, that the said supposed indebtedness of the said defendant to the said plaintiffs was wholly and exclusively for notes, bills, or obligations issued by an unincorporated banking association or partnership in the District of Columbia, by which said association, by the name and style of "the Farmers and Mechanics' Bank, Washington city, D. C., promised to pay on demand to the bearer certain sums specified therein," which were dated at the city of Washington, D. C., (District of Columbia meaning) and signed Wm. T. Smithson, cash'r, (William T. Smithson, cashier, meaning) and Cha's W. Statham, pres't, (Charles W. Statham, president, meaning), which said bills, notes or obligations were for the payment of money, and were issued to the said defendant, in the county of Washington, in the District of Columbia, by the said plaintiffs heretofore, to wit, on the first day of March, one thousand eight hundred and fifty-three, contrary to the provisions of the said act, and that said contracts under which the same were so issued are the only contracts heretofore *to* made between the said defendant and the said plaintiffs, and are the same identical promises and undertakings stated and set forth in the said declaration, and are null and void, and this he is ready to verify; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their aforefaid action thereof against him, &c.; and the said plaintiffs do the like, &c.

5th Plea. And for further plea in this behalf, the said defendant, by like leave of the court here for that purpose first had and obtained, says that the said plaintiffs ought not to have or maintain their aforesaid action against him, because he says, that in and by an act of Congress approved the seventh day of July, 1838, entitled "An act to restrain the circulation of small notes as a currency in the District of Columbia and for other purposes," it was among other things provided, "that after the tenth day of April (then) next, it shall be unlawful for any individual, company, or corporation, to issue, pass or offer to pass within the District of Columbia, any note, check, bank bill, or any other paper currency of a less denomination than five dollars; and if any person or corporation shall violate the provisions of this section, the person so offending, or in case any corporation so offending, the officers of any such

corporation, for the time being shall be liable to indictment by the grand jury of the county within the district where the offence shall have been committed; and the person so offending, or the officers of the corporation so offending, shall, on conviction thereof, be fined in a sum not exceeding fifty dollars, at the discretion of the court, for every offence." And the defendant further says, that the sole and only consideration for the said several supposed promises and undertakings in the said declaration mentioned, was paper currency of a less denomination than five dollars, issued by the said plaintiffs to the said defendant, in the county of Washington, in the District of Columbia, heretofore, to wit, on the first day of March, one thousand eight hundred and fifty-three, contrary to the provisions of the above last recited act, and this he is ready to verify; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.; and the said plaintiffs do the like, &c.

6th Plea. And for further plea in this behalf, like leave of the court here for this purpose first had and obtained, the said defendant says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says, that each and every of the said several supposed promises and undertakings in the said plaintiffs' declaration mentioned were made and entered into at the city of Washington, in the District of Columbia, heretofore, to wit, on the day and year last aforesaid, contrary to the provisions of the act of Congress, approved the seventh day of July, 1838, entitled "An act to restrain the circulation of small notes as a currency in the District of Columbia, and for other purposes," and in violation thereof, and this he is ready to verify; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.; and the said plaintiffs do the like, &c.

7th Plea. And for further plea in this behalf, like leave of this court here for this purpose first had and obtained, the said defendant says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says, that each and every of the said supposed promises and undertakings in the said plaintiffs' declaration mentioned were made and entered into in the city of Washington, in the District of Columbia, heretofore, to wit, on the day and year last aforesaid, contrary to the provisions of the act of Congress, approved the third day of March, 1817, entitled "An act to incorporate the subscribers to certain banks in the District of Columbia, and to prevent the circulation of the notes of unincorporated associations within the said District," and in violation thereof, and this he is ready to verify; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.; and the said plaintiffs do the like, and so forth.

8th Plea. And for further plea in this behalf, like leave of the court here for this purpose first had and obtained, the said defendant says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says, that by title 20 of chapter 20 of the first part of the Revised Statutes of the State of New York, it is, among other things, enacted as follows: "No person or association of persons, or body corporate, except such bodies corporate as are expressly authorized by law, shall keep any office for the purpose of receiving deposits, or discounting notes or bills, or issuing any evidences of debt, to be loaned or put in circulation as money; nor shall they issue any bills or promissory notes, or other evidences of debt, as private bankers, for the purpose of loaning them or putting them in circulation as money, unless thereto specially authorized by law."

And it was further enacted, and now forms a part of the same title, chapter, and part of said statutes, as follows, to wit: "It shall not be lawful for any person, from and after the first day of September next, (that is to say, the month of September, in the year one thousand eight hundred and thirty, when the said act was passed,) to pass, circulate or receive in payment, within this State, (the State of New York,) any bank note or bill, or promissory note, for the payment of money issued by any State or sovereignty, or by any body corporate or politic, not authorized to issue the same in and by the laws and statutes of this State, under the denomination of five dollars." And the said defendant says, that the said several supposed promises and undertakings in the said plaintiffs' declaration mentioned are, and were, wholly and exclusively for bills and promissory notes for the payment of money issued and delivered to the said defendant, at Buffalo, in the State of New York, by the said plaintiffs, for the purpose of being loaned or put in circulation as money, at Buffalo, in said State of New York, without those who issued the same being thereto specially authorized by law, and contrary to the provisions of the said statutes above cited and in violation thereof, and that the several supposed promises and undertakings were and are illegal, and null and void, and this the said defendant is ready to verify; wherefore he prays judgment, whether the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

Gen'l Dem'r to 8th Plea.

Whereupon the said plaintiffs, by their attorney aforesaid, say that the last plea above pleaded aforesaid by the said defendant, in manner and form aforesaid, and the matters in the same contained, are not sufficient in law to preclude them, the said plaintiffs, from having and maintaining their aforesaid action thereof against him, the said defendant; to which said plea, in manner and form above pleaded, they, the said plaintiffs, have no neces-

sity, nor are, by the law of the land, obliged in any manner to answer, and this they are ready to verify; wherefore, for want of a sufficient plea in this behalf, the said plaintiffs pray judgment and their damages aforesaid, to be adjudged to them, and so forth.

9th Plea. And for further plea in this behalf, the said defendant, by like leave of the court here first had and obtained, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says, that it is and was provided by the title twenty, chapter twenty, of the first part of the Revised Statutes of New York, as follows, to wit: "No person, association of persons, or body corporate, except such bodies corporate as are expressly authorized by law, shall keep any office for the purpose of receiving any deposits or discounting notes or bills, or issuing any evidences of debt, to be loaned or put in circulation as money; nor shall they issue any bills or promissory notes, or other evidences of debt as private bankers, for the purpose of loaning them or putting them in circulation as money, unless thereto specially authorized by law." And the said defendant further says, that the sole and only consideration for the said several supposed promises and undertakings in the said plaintiffs' declaration mentioned, were evidences of debt issued to him in Buffalo, in the State of New York, by the said plaintiffs, with the intent and for the purpose of being there put in circulation as money, and that the said plaintiffs were not authorized by law to loan or put the same in circulation as money in said State, and that so issuing said evidences of debt, to be loaned and put in circulation as money, was contrary to and in violation of the last mentioned said statute, and that thereby the said promises and undertakings became, were and are, null and void, and this the said defendant is ready to verify; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their action thereof against him, and so forth.

Gen'l Dem'r to 9th Plea.

Whereupon the said plaintiffs, by their attorney aforesaid, say, that the last plea above pleaded aforesaid by the said defendant, in manner and form aforesaid, and the matters in the same contained, are not sufficient in law to preclude them, the said plaintiffs, from having and maintaining their aforesaid action thereof against him, the said defendant; to which said plea, in manner and form aforesaid above pleaded, they, the said plaintiffs, have no necessity, nor are, by the law of the land, obliged in any manner to answer, and this they are ready to verify; wherefore, for want of a sufficient plea in this behalf, the said plaintiffs pray judgment and their damages aforesaid, to be adjudged to them, and so forth.

10th Plea. And for further plea in this behalf, the said defendant, by like leave of the court here first had and obtained, says that

the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that the sole and only consideration for each and every of the said several supposed promises in the said plaintiffs' declaration mentioned, was the issuing to him by the said plaintiffs in the city of Buffalo, in the State of New York, with the intent by them, and for the purpose of being there put in circulation as money, sundry evidences of debt in the form and similitude of bank bills, made by the said plaintiffs, without being specially authorized by law to issue or put the same in circulation, contrary to the provisions of the last above mentioned statute of the State of New York, and in violation thereof, and which said promises and undertakings are each and every of them null and void, and of no legal effect whatever, and this he is ready to verify; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, and so forth.

Gen'l Dem'r to 10th Plea.

Whereupon the said plaintiffs, by their attorney aforesaid, say that the last plea above pleaded aforesaid by the said defendant in manner and form aforesaid, and the matters in the same contained, are not sufficient in law to preclude them, the said plaintiffs, from having and maintaining their action aforesaid thereof against him, the said defendant; to which said plea, in manner and form aforesaid pleaded, they, the said plaintiffs, have no necessity, nor are they by the law of the land obliged in any manner to answer, and this they are ready to verify; wherefore, for want of a sufficient plea in this behalf, the said plaintiffs pray judgment, and their damages aforesaid to be adjudged to them, and so forth.

11th Plea. And for a further plea in this behalf, like leave of the court first had and obtained, the said defendant saith, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says that as to the sum of three thousand dollars, of the said supposed promises and undertakings in the said plaintiffs' declaration specified heretofore, to wit, on the first day of March, one thousand eight hundred and fifty-three, the said plaintiffs entered into a contract or ageement with this defendant, by which the said plaintiffs agreed, in consideration of the agreements of this defendant hereinafter set forth, that they would at any time within two years from the time of making said agreement, furnish and deliver to the said defendant the sum of seventy-five thousand dollars in the bills of the Farmers and Mechanics' Bank, Washington city, D. C., in such sums and at such times as this defendant should request of the said plaintiffs; and they further agreed that they would sustain the credit of the bills issued by them, as the bills of the Farmers and Mechanics' Bank aforesaid, at the city of New York, so that they should at all times

be of a market value, of not less than ninety-nine cents on a dollar, and should be quoted at not over one per cent. discount in said city, in the office and Bank-note Detector of John Thompson, esq., of said city. And this defendant, in consideration of said agreement of the said plaintiffs, agreed with them, that in case the said plaintiffs should in all things perform their said agreement, he would pay to the said plaintiffs at the rate of three per cent. per annum for the use of all such bills as should be furnished and delivered to him in pursuance of said agreement, for the periods he should have the use of the same, said interest to be paid annually from the time of making the said agreement; that he would endeavor to obtain a circulation for said bills, and put them into circulation, and upon their being redeemed by the said plaintiffs, that he would repay to the plaintiffs, on demand, the amount so redeemed by the said plaintiffs as aforesaid. And this defendant further says, that in pursuance of said agreement, the said plaintiffs, on or about the day and year last aforesaid, furnished and delivered to this defendant the bills of the said bank, purporting to be of the nominal amount of three thousand dollars, and this defendant put a part of the same into circulation, and has in all things duly performed all the conditions of the said agreement on his part to be performed, but that the said plaintiffs, not regarding their agreement with this defendant, would not and did not furnish and deliver to this defendant any other or further sum or amount of said bills at any time, although requested by this defendant so to do, but, on the contrary thereof, the said plaintiffs refused so to do. And this defendant further says, that the said plaintiffs did not sustain or maintain the credit of the said bills at the city of New York, so that they were of the market value of ninety-nine cents on the dollar, nor so that they were quoted as being at a discount of not over one per cent., as specified in their said agreement, but, on the contrary thereof, the said plaintiffs so conducted themselves in respect to the said bills, that they wholly lost their credit in the city of New York, and were of no market value, and they could not be discounted at the offices of the bankers and brokers in said city at any rate of discount, and were not quoted as being discounted at any rate in the said city, in the office and Detector of John Thompson, esq., of said city, but were entirely stricken off, and out of the quotations of said Detector, and did not appear therein as having or being of any value whatever, by reason whereof he, this defendant, has sustained great loss and damage, and that the above is the only agreement between this defendant and the said plaintiffs in relation to the said bills, all of which this defendant is ready to verify; wherefore he prays judgment, if the said plaintiffs ought to have or maintain their action thereof aforesaid against him, &c.; and the said plaintiffs do the like, and so forth.

Demurrer to 8th, 9th and 10th Pleas withdrawn, and issue joined thereto.—Venire Facias to Oct. Term, 1856.—*Appearance and Continuance to March Term,* 1857.—*Appearance and Continuance to Oct. Term,* 1857.—*Appearance and Continuance to January Term,* 1858.

Whereupon the said plaintiffs, by their attorney aforesaid, by leave of the court here, withdraw their demurrer so as aforesaid pleaded to the 8th, 9th and 10th pleas aforesaid of the said defendant, and by way of replication thereto, take issue with the said defendant; therefore let a jury thereon appear before the court here, on the third Monday of October next, by whom and so forth, and who neither and so forth, to recognise and so forth, became as well and so forth; the same day is given to the aforesaid parties, then and there, and so forth.

At which mentioned third Monday of October, in the year eighteen hundred and fifty-six, come again into the circuit court here, as well the said plaintiffs by their attorneys aforesaid, as the said defendants by their said attorneys; whereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the fourth Monday of March next; the same day is given to the said parties, then and there, and so forth.

At which mentioned fourth Monday of March, in the year eighteen hundred and fifty-seven, come again into the circuit here, as well the said plaintiffs by their attorneys aforesaid, as the said defendant by his attorneys aforesaid; whereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the third Monday of October next; the same day is given to the said parties, then and there, and so forth.

At which mentioned third Monday of October, in the year eighteen hundred and fifty-seven, come again into the circuit court here, as well the said plaintiffs by their attorneys aforesaid, as the said defendant by his attorneys aforesaid; whereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the third Monday of January next; the same day is given to the said parties, then and there, and so forth.

And now, at this day, to wit, the said third Monday of January, in the year eighteen hundred and fifty-eight, come again into the circuit court here, as well the said plaintiffs by their attorneys aforesaid, as the said defendant by his attorney aforesaid; whereupon, for trying the issues aforesaid, it is ordered by the court here that twelve persons from the panel of petit jurors returned

to the court here, by the marshal of the District of Columbia, be called; who being called, come, to wit:

Jury.

1. Harrison Taylor; 2. Edw. L. Harbaugh; 3. Francis Hume; 4. Basil Robey; 5. Lawrence Levy; 6. Robert Ricketts; 7. Robert A. Griffin; 8. Aaron Devine; 9. Elisha Lazenby; 10. Hy. H. McPherson, jr.; 11. John J. Joyce; 12. James Ward.

Verdict for Defendant.—Judgment.

Who being empanelled and sworn to say the truth in the premises, upon their oath do say: that the said defendant did not assume upon himself, and promise in manner and form as the said plaintiffs above against him complain, as the said defendant above by pleading hath alleged; therefore it is considered by the court here, that the said plaintiffs take nothing by their writ and declaration aforesaid, but be in mercy for their false clamor; and that the said defendant go thereof without day, &c.

It is also considered by the court here, that the said defendant recover against the said plaintiffs the sum of dollars and cents, by the court now here adjudged unto the said defendant, for his costs and charges by him about his defence in this behalf laid out and expended; and that the said defendant go thereof without day, &c.

Test: JNO. A. SMITH, *Cl'k.*

Mem.

Memorandum.—Before the jurors aforesaid retired from the bar of the court here, the said plaintiffs, by their attorneys aforesaid, filed in court here the following bills of exceptions, to wit:

Pl'ffs' 1st Bill of Exceptions.

Pl'ffs' 1st Bill of Exceptions.

STATHAM, SMITHSON & Co.
vs.
WILLIAM W. MANN.

At the trial of this cause, the plaintiffs, to maintain the issues on their part joined, offered in evidence the following deposition (copied in page 50,) which deposition was, together with the certificate of the same annexed, sealed up by the commissioner taking the same, and directed by him "To the Judges of the Circuit Court of the District of Columbia, for Washington County, D. C.," and received by due course of mail, and which remained so sealed up until opened in open court, by the order thereof, on the second day of April, 1857; to the admissibility of which deposition, or any portion thereof, the defendant by his counsel *of* objected; which objection was overruled by the court, and the said deposition held

well and sufficiently taken and returned. And thereupon the defendant by his counsel further objected to the following portions of said depositions, viz: that part of the answer of the deponent to the 5th interrogatory wherein he says: "I afterwards waited on King and asked him as to whether such a contract had been made by him with the plaintiffs for Mann; and he replied, that if any other contract or agreement had been made between the plaintiffs and defendant, other than that set forth in the letter of William P. Smithson, accompanying the $2,100 package, he knew nothing of it, and had nothing to do with it; but Mr. King said he had been authorized to make another contract with the plaintiffs by Mann, and that he called on Smithson for that purpose, and mentioned it to Smithson, but that Smithson was so exasperated at the rapid return of the plaintiffs' notes circulated by Mann for redemption, and of Mann's contract, that he would hear of no further proposals. King also said that he did not deliver Mann's letter to Smithson which contained the proposal, but brought it back with him to Buffalo." Also that part of his answer to the 9th interrogatory wherein he says: "I would, if any had existed either with Mann or with any other acting for him; because, of the nature of my business in the plaintiffs' bank, having to consult with William T. Smithson, and being consulted and advised of by him, of every transaction of any moment which accrued in the business;" and moved that the said portion so objected to be excluded and not read to the jury; which objection the court sustained, and refused to allow said portions objected to, or any part thereof, to be read to the jury; to which ruling of the court the plaintiffs by their counsel except, and pray the court to sign, seal, and cause to be enrolled this their first bill of exceptions, which is accordingly done, this twenty-fifth day of January, 1858.

JAS. DUNLOP, [SEAL.]
WM. M. MERRICK, [SEAL.]
JAS. S. MORSELL. [SEAL.]

Pl'ffs' 2d Bill of Exceptions.

And thereupon the plaintiffs rested their case; and the defendant proceeding to sustain the issues on his part joined, offered in evidence the following depositions, (copied in page ,) which depositions were with the certificate annexed to the same returned to this court in a sealed envelope written upon one side: Plaintiffs' deposition;" "Charles W. Statham, William T. Smithson, and James G. Hamilton, pl'ffs, vs. William W. Mann, def't;" "To the clerk of the circuit court of the District of Columbia for Washington county, D. C.;" "Opened in open court;" "Filed 3d January, 1857." And on the opposite side of said envelope were the following words and figures: "John N. Magill, U. S. com'r;"

"Taken, sealed up, and transmitted by me, John N. Magill, U. S. com'r, nor. dist. Ill.;" "John N. Magill, U. S. com'r;" and which envelope remained sealed up until opened by order of the court on the 3d day of January, 1857; to the admissibility of which depositions the plaintiffs objected, which objection was overruled by the court; to the overruling whereof the plaintiffs except, and pray the court to sign, seal, and cause to be enrolled this their second bill of exceptions; which is accordingly done this twenty-fifth day of January, 1858.

JAS. DUNLOP, [SEAL.]
WM. M. MERRICK. [SEAL.]

Pl'ffs' 3d Bill of Exceptions.

And thereupon the plaintiffs, by their counsel, further objected to the reading to the jury of the following portions of said depositions, (copied in page ,) which objection was sustained as to so much of the answer of Alanson Webster to the interrogatory, wherein he says, "The men saying they could not get groceries for it," but overruled as to all and singular the other portions of said depositions objected to; to which overruling the plaintiffs, by their counsel, except, and pray the court to sign, seal, and cause to be enrolled this their third bill of exceptions; which is accordingly done, this twenty-fifth day of January, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

Pl'ffs' 4th Bill of Exceptions.

And upon the argument of this cause the counsel for the plaintiffs argued to the jury that the instruction given on the plaintiff prayer, that there was not proven by the defendant a contract, and assuming such a contract to have been made, that the same was, as regards the laws of this District, severable in its character, and the illegal portion thereof only void, and the residue valid; whereupon said counsel was stopped by the court and not allowed to proceed on that point, because the court held that the bill of particulars filed by the plaintiffs in this cause, and as follows, (copied in page ,) was conclusive upon the plaintiffs; and further instructed the jury, that upon the bill of particulars filed by the plaintiffs as to the $2,100 charged under date of 25th January, 1853, and including notes under as well as over five dollars, the contract in relation to that item is indivisible and is void.

And as to the other item in the bill of particulars, of date of 8th March, 1853, for $3,000, the contract in relation to that item is indivisible and is void; to which ruling of the court the plaintiffs, by their counsel, excepted, and prayed the court to sign,

seal, and cause to be enrolled this their 4th bill of exceptions; which is accordingly done, this 29th of January, 1858.

JAS. DUNLOP, [SEAL.]
WM. M. MERRICK. [SEAL.]

Pl'ffs' 5th Bill of Exceptions.

And thereupon the plaintiffs, by their counsel, moved the court to instruct the jury that the item in said bill of particulars dated January 25th, 1853, was not conclusive upon the plaintiffs as an allegation of an inseverable contract, nor was the other item of the 8th of March, 1853, so conclusive, nor did any portion of said bill of particulars estop the plaintiffs from claiming, as regards the law of this District, that the contract or contracts, if any, were severable in their nature; which instruction the court refused to give; to which refusal the plaintiffs except, and pray the court to sign and seal this their 5th bill of exceptions; which is accordingly done, this 29th January, 1858.

JAS. DUNLOP, [SEAL.]
WM. M. MERRICK. [SEAL.]

Pl'ffs' 6th Bill of Exceptions.

If the jury believe from the evidence aforesaid, that the defendant, at the time of the delivery to him of the said notes, was a lawyer, resident in the State of New York, and in that character had knowledge or should have had knowledge of the statute laws of his own State, and fraudulently and designedly concealed or withheld from the knowledge of the plaintiffs the fact of the existence of such penal prohibitory statutes in New York, and induced the said plaintiffs to deliver the said notes to him, the defendant, for circulation in New York, it is not competent for the defendant to defeat the plaintiffs' right of recovery in this action by now pleading in bar the said prohibitory statutes.

Refused.

If the jury believe from the evidence that there was no special contract as to the terms on which the plaintiffs delivered and the defendant received the notes in question, and that the without such special contract, and, as his agent, put said notes in circulation, without violating any law applicable to the transaction, and received therefor money or its equivalent, which he has not paid or accounted for to the *defendant*, the said defendant is answerable therefor to the plaintiffs in this action as for money had and received by the defendant to and for the use of the plaintiffs.

Refused.

If the jury believe, from the evidence aforesaid, that the notes in question were delivered to the defendant by the plaintiffs, to be put in circulation in the West or western States, or in any States and Territories other than the State of New York, and that, in

pursuance of said design, they, or any of them, were so circulated, and the defendant received in exchange therefor money, or its equivalent, to the use of the plaintiffs, the defandant is liable to account for the same to the plaintiffs in this action. And if the said notes, or any of them, were put in circulation in the State of New York by the defendant on his own responsibility, whereby a loss accrued to the plaintiffs, the defendant is liable in this action for the said loss.

Refused.

Which instructions, and each of them, the court refused to give; to which ruling of the court the plaintiffs, by their counsel, except, and pray the court to sign, seal, and cause to be enrolled, according to the statute, this their 6th bill of exceptions, which is accordingly done, this 29th of January, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

Pl'ffs' 7th Bill of Exceptions.

And thereupon the plaintiffs prayed the court to qualify the foregoing instruction, by adding thereto the following:

But the law of New York, when the contract was made, prohibited only the circulation of the notes of the plaintiffs in that State in the capacity of a private banker, and without being specially authorized to circulate them; and the contract to be void must have required such an issue by him in that capacity, and the burden of proof to establish a contract prohibited by the laws of New York rests upon the defendant.

Refused.

Which qualification was refused by the court; to which refusal the plaintiffs, by their counsel, except, and pray the court to sign, seal, and cause to be enrolled this their 7th bill of exceptions, which is accordingly done, this 29th of January, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

Pl'ffs' 8th Bill of Exceptions.

That to defeat the claim of the plaintiffs on the ground of illegality, under the law of New York, the jury must believe, from the whole evidence aforesaid, as hereinbefore set out:

1. That there was a contract entered into between the plaintiffs and defendant; which contract, in some essential part, violated the provisions of the law of New York offered in evidence.

2. That the plaintiffs did not act in ignorance of the law of said State, as offered in evidence, in making said contract.

3. That the onus probandi as to said contract, having been in

violation of the provisions aforesaid, is upon the defendant, who alleges said illegality.

Which instructions, or either of them, the court refused to give; and to such refusal the plaintiffs, by their counsel, except, and pray the court to sign, seal, and cause to be enrolled this their 8th bill of exceptions, which is accordingly done, this 29th of January, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

Pl'ffs' 9th Bill of Exceptions.

That it is for the jury to determine whether the defendant was or was not authorized to loan or circulate the notes or bills of the plaintiffs, as mentioned in the law of the State of New York, offered in evidence; and if the jury shall believe that the defendant fraudulently pretended to the plaintiffs to possess such authority, or fraudulently concealed from the plaintiffs the want of such authority, and that the plaintiffs were deceived by such representations or concealment, and being so deceived, delivered certain of their notes or bills for circulation by the defendant, and that the defendant having obtained said notes or bills by said false representations or concealment, loaned or circulated the same in violation of the law of the State of New York, and when not authorized by said law, or circulate, then it is not competent for the defendant in this action to take advantage of his own fraud to defeat any justice of the claim of the plaintiffs.

Which instruction the court refused to give; and to such refusal the plaintiffs, by their counsel, except, and pray the court to sign, seal, and cause to be enrolled this their 9th bill of exceptions, which is accordingly done, this 29th January, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

Pl'ffs' 10th Bill of Exceptions.

If, from the whole evidence aforesaid, the jury shall believe that the plaintiffs and the defendant entered into a special agreement, under which the latter undertook and stipulated to put in circulation the notes or bills of the former, then such agreement is not void by the law of New York, read in evidence, unless such agreement provided or contemplated the issue of the notes or bills of the plaintiffs for the purpose of being loaned in part or circulated in the State of New York by the defendant, without the defendant being thereunto specially authorized.

Refused.

To which ruling of the court the plaintiffs except, and pray the

court to sign, seal, and cause to be enrolled this their 10th bill of exceptions, which is accordingly done, this 29th Jan'y, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

The above prayer is submitted, leaving out the two last lines.

Refused.

Pl'ffs' 11th Bill of Exceptions.

To which ruling of the court the plaintiffs, by their counsel, except, and pray the court to sign, seal, and cause to be enrolled this their 11th bill of exceptions, which is accordingly done, this 29th of Jan'y, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

Pl'ffs' 12th Bill of Exceptions.

And thereupon, and after the instructions given and refused by the court as aforesaid, during the said summing up on the part of the plaintiffs, and the plaintiffs' counsel being called upon by the court to state what further points are left open for the jury, and declining to do so, the counsel for the defendants pray the court to instruct the jury, on the whole evidence aforesaid, if the same is by them believed to be true, the plaintiffs are not entitled to recover in this action.

Which instruction the court gave as prayed; plaintiffs except, and pray the court to sign and seal this their 12th bill of exceptions, which is accordingly done, this 29th Jan'y, 1858.

JAS. DUNLOP, [SEAL.]
WM. M. MERRICK. [SEAL.]

Deposition of Alexander M. Hamilton, referred to in Plaintiffs' first Bill of Exceptions, page 36.

UNITED STATES,
Northern District of Illinois, ss.

Be it remembered, that on the twentieth day of March, anno Domini one thousand eight hundred and fifty-seven, personally appeared Alexander M. Hamilton before me, John W. Magill, a commissioner appointed by the circuit court of the United States, in and for the northern district of Illinois, in the seventh circuit, under the laws of the United , to take affidavits and acknowledgments of bail, &c., to testify and the truth to say on the part and behalf of the plaintiffs, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the District of Columbia, for Washington county, wherein Charles W. Statham, William T. Smithson, and James G. Hamilton are

plaintiffs, and William W. Mann is defendant; and the said witness, being of lawful age, and having been by me first cautioned and sworn, to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

Interrogatory first. What is your name, age, residence, and occupation?

Answer. My name is Alexander M. Hamilton; I am twenty-six years of age; I reside in the city of Chicago; I am a real estate agent.

Interrogatory second. Are you acquainted with the plaintiffs and defendant in this case; if so, how long have you known them?

Answer. I am acquainted with the plaintiffs and defendant; I have known the plaintiffs over five years, and the defendant since June, 1853.

Interrogatory third. Were you, at any time during the year 1853, in the employment of the plaintiffs, for any purpose? If so, state at what time during said year you were employed, and for what purpose you were employed.

Answer. I was, from the first of January, 1853, until about September or October; it was late in the season—I do not recollect precisely. I was employed as an assistant in the banking office of Statham, Smithson & Co., known as the Farmers and Merchants' Bank of Statham, Smithson & Co.

Interrogatory fourth. During your employment in said office, were you at any time cognizant of the fact of the delivery of any amount of money to the defendant in this cause, or to any one for him? If so, state where such money was so delivered and to whom it was delivered. State fully and particularly.

Answer. I was. On or about the 25th day of January, 1853, William T. Smithson, in my presence, delivered to D. C. King, of Buffalo city, a package, said to contain twenty-one hundred dollars, in notes of the Farmers and Merchants' Bank of Statham, Smithson & Co., to be delivered to William W. Mann, of Buffalo city; and afterwards, about the middle of February, Mann wrote to Smithson, requesting him to send him six thousand dollars more. I saw the letter from Mann. Smithson answered, in reply, that he had no notes on hand; and did not make any remittance. Some short time afterwards Mann wrote, in reply to Smithson's letter, saying that he was disappointed in not receiving any remittance, and requested him to send the money forthwith. In reply to it, Smithson sent him by express three thousand dollars, in notes of the Farmers and Merchants' Bank of Statham, Smithson & Co.

Interrogatory fifth. Did you at any time go to Buffalo city, at the request of the plaintiffs, to effect a settlement of the account between the plaintiffs and defendant? If so, state at what time you

went, and state fully and particularly all that occurred at the interview had with the defendant.

Answer. I did. In the month of June, 1853, I called upon the defendant at his office, and presented him with a letter from William T. Smithson, giving me full authority to settle the account between plaintiffs and defendant; he then stated that he was ready to settle, agreeably to contract; admitted that received the twenty-one hundred dollars of D. C. King, and that he had also received three thousand dollars at another time; he also said, that with the twenty-one hundred dollars he had received the letter from Smithson; he said he had put the whole amount in circulation, except about six hundred and fifty dollars which he paid me, and about three hundred dollars in the hands of another party, then absent from Buffalo, which he said he would forward to Smithson as soon as the party returned to Buffalo. I do not know whether Mann ever returned the $300 or not. At the interview he said he was willing to hear any proposition from me relative to a settlement; and I told him that I had no propositions to make, other than that contained in the letter of Mr. Smithson, which had accompanied the $2,100 package. He declined settling on the terms contained in that letter, and assigned as a reason that D. C. King, as his agent, had made a subsequent contract with the plaintiffs; and after which I returned to Washington city; and on reaching there, was sent back to Buffalo, to make another effort to effect a settlement. I arrived at Buffalo city, and called on Mr. Mann—told him I was authorized by the plaintiffs to make a fair and honorable settlement. Mr. Mann said that all he wanted was a fair settlement, and that if we could not agree, he was willing to refer it to other parties, thus repeating a similar offer that I had previously made. At our next interview he declined to refer it to other parties. I then asked him on what terms he would settle, and he replied, "only by passing receipts, and letting the matter drop." I replied, that I could not settle on any such terms. During the time I was at Buffalo, I had frequent interviews with Mann, and he told me at these interviews that D. C. King, his agent, had made a subsequent contract with the plaintiffs, regarding the money and the terms on which he had received it. I afterwards waited on King, and asked him as to whether such a contract had been made by him with the plaintiffs for Mann; and he replied, that if any other contract or agreement had been made between the plaintiffs and defendant, other than that set forth in the letter of William T. Smithson accompanying the $2,100 package, he knew nothing of it, and had nothing to do with it; but Mr. King said that he had been authorized to make another contract with the plaintiffs by Mann, and that he called on Smithson for that purpose, and mentioned it to Smithson, but that Smithson was so exasperated at the rapid return of the plaintiffs' notes circulated by

Mann for redemption, and at Mann's conduct, that he would hear of no further proposals. King also said that he did not deliver Mann's letter to Smithson, which contained the proposal, but brought it back with him to Buffalo.

Interrogatory sixth. Did Statham, Smithson & Co., to your knowledge, continue to redeem in gold and silver, or its equivalent, at their banking-house, in Washington city, all of the notes of their issue that were presented for redemption?

Answer. They redeemed promptly all notes presented at their counter.

Interrogatory seventh. Did they redeem promptly all the notes circulated by William W. Mann, that were presented for redemption up to the time of your leaving their employment?

Answer. They did.

Interrogatory eighth. Were you familiar with the banking business of Statham, Smithson & Co., as conducted by Mr. Smithson; and if so, state whether you knew of any other contract existing between William W. Mann and William T. Smithson, for the circulation of their notes, other than the one laid down in Smithson's letter of the 25th of January, 1853?

Answer. I was quite familiar with the banking business of Statham, Smithson & Co., as the same was conducted by William T. Smithson. I had free access to all the books and papers in the office, and read and answered letters for the firm; I know of no other contract existing between William T. Smithson and William W. Mann, other than that contained in Smithson's letter of the 25th of January, 1853.

Interrogatory ninth. State whether, if other contracts existed or were made between William T. Smithson and William W. Mann in relation to the circulation of the notes of Statham, Smithson & Co., you would have known of the existence of the same, and state why?

Answer. I would if any had existed, either with Mann or with any one acting for him, because of the nature of my business in the plaintiffs' bank, having to consult with William T. Smithson, and being consulted and advised of by him of every transaction of any moment which occurred in the business.

ALEXANDER M. HAMILTON.

UNITED STATES,
Northern District of Illinois, ss.

I, John W. Magill, a commissioner appointed by the circuit court of the United States in and for the northern district of Illinois, in the seventh circuit, under and by virtue of the act of Congress, do hereby certify that the reason for taking the foregoing deposition, and the fact is, that the witness above mentioned re-

sides at Chicago, in the county of Cook, in the northern district aforesaid, more than one hundred miles from Washington city, the place of trial *of trial* of the aforementioned cause; that no notification of the time and place of taking said deposition was made out and given by me to the adverse party, for the reason that neither he nor his attorney live within one hundred miles of the place of taking said deposition; and I further certify, that on the said twentieth day of March, eighteen hundred and fifty-seven, I was attended by John F. Clements, esquire, of counsel for the plaintiffs, and by the witness, at my office, No. 37 Clark street, in said city of Chicago, and district aforesaid, and the said witness being of lawful age and sound mind, and having been by me carefully examined, and cautioned, and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court, for which the same was taken. I further certify that I am not counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof, I have hereunto set my hand, this 20th day of March, A. D. 1858.

JNO. W. MAGILL,
United States Com'r for
Northern District of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

I, William H. Bradley, clerk of the circuit court of the United States of America for the northern district of Illinois, seventh circuit, do hereby certify that I am well acquainted with the handwriting of John W. Magill, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the northern district of Illinois, seventh circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this twentieth [SEAL.] day of March, in the year of our Lord one thousand eight hundred and fifty seven, and of our independence the eighty first year.

WM. H. BRADLEY, *Clerk.*

Deposition of Alexander M. Hamilton, referred to in Plaintiffs' second Bill of Exceptions, page 38.

UNITED STATES,
Northern District of Illinois, ss.

Be it remembered, that on the fifteenth day of December, anno Domini one thousand eight hundred and fifty-six, personally appeared Alexander M. Hamilton before me, John W. Magill, a commissioner appointed by the circuit court of the United States in and for the northern district of Illinois, in the seventh circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., to testify and the truth to say, on the part and behalf of the plaintiffs in a certain suit or matter of controversy now depending and undetermined in the circuit court of the District of Columbia, for Washington county, wherein Charles W. Statham, William T. Smithson, and James G. Hamilton are plaintiffs, and William W. Mann defendant; and the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

Interrogatory first. What is your name, age, residence and occupation?

Answer. My name is Alexander M. Hamilton; I am twenty-six years of age; I reside in the city of Chicago; I am a real estate agent.

Interrogatory second. Are you acquainted with the plaintiffs and defendant in this case; if so, how long have you known them?

Answer. I am acquainted with the plaintiffs and defendant; I have known the plaintiffs over five years, and the defendant since June, 1853.

Interrogatory third. Were you at any time during the year 1853 in the employment of the plaintiffs for any purpose? If so, state at what time during said year you were employed, and for what purpose you were employed.

Answer. I was, from the first of January, 1853, until about September or October; it was late in the season; I don't recollect precisely; I was employed as an assistant in the banking office of Statham, Smithson & Co., known as the Farmers & Merchants' Bank of Statham, Smith & Co.

Interrogatory fourth. During your employment in said office, were you at any time cognizant of the fact of the delivery of any amount of money to the defendant in this cause, or to any one for him. If so, state where such money was so delivered, when it was delivered, what amount was so delivered, and to whom it was delivered. State fully and particularly.

Answer. I was, on or about the 25th of January, 1853. William

T. Smithson, in my presence, delivered to D. C. King, of Buffalo city, a package said to contain twenty-one hundred dollars in notes of the Farmers & Merchants' Bank of Statham, Smithson & Co., to be delivered to William W. Mann, of Buffalo city; and afterwards, about the middle of February, Mann wrote to Smithson, requesting him to send him six thousand dollars more. I saw the letter from Mann. Smithson answered in reply that he had no notes on hand, and did not make any remittance. Some short time afterwards Mann wrote in reply to Smithson's letter, saying that he was disappointed in not receiving any remittance, and requested him to send the money forthwith. In reply to it, Smithson sent him by express three thousand dollars in notes of the Farmers & Merchants' Bank of Statham, Smithson & Co.

Interrogatory fifth. Did you at any time go to Buffalo city at the request of the plaintiffs to effect a settlement of the account between the plaintiffs and defendant? If so, state at what time you went, and state fully and particularly all that occurred at the interview had with the defendant.

Answer. I did. In the month of June, 1853, I called upon the defendant at his office, and presented him with a letter from W. T. Smithson, giving me full authority to settle the account between plaintiffs and defendant. He then stated that he was ready to settle agreeably to contract; admitted that he had received the twenty-one hundred dollars of D. C. King, and that he had also received three thousand dollars at another time; he also said, that with the twenty-one hundred dollars he had received the letter from Smithson. He said he had put the whole amount in circulation, except about six hundred and fifty dollars, which he paid me, and about three hundred dollars in the hands of another party, then absent from Buffalo, which he said he would forward to Smithson as soon as the party returned to Buffalo. I don't know whether Mann ever returned the $300 or not. At the interview, he said he was willing to hear any propositions from me relative to a settlement, and I told him that I had no propositions to make, other than in that contained in the letter of Mr. Smithson, which had accompanied the $2,100 package. He declined settling on the terms contained in that letter, and assigned as a reason that D. C. King, as his agent, had made a subsequent contract with the plaintiffs; and after which I returned to Washington city, and on reaching there, was sent back to Buffalo to make another effort to effect a settlement. I arrived at Buffalo city and called on Mr. Mann; told him I was authorized by the plaintiffs to make a fair and honorable settlement. Mr. Mann said that all he wanted was a fair settlement, and that if we could not agree, he was willing to refer it to other parties, repeating a similar offer that I had previously made. At our next interview, he declined to refer it to other parties. I then asked him on what terms he would settle; and he replied, only

by passing receipts, and letting the matter drop. I replied that I could not settle on any such terms. During the time I was at Buffalo I had frequent interviews with Mann, and he told me at those interviews that D. C. King, as his agent, had made a subsequent contract with the plaintiffs, regarding the money and the terms on which he had received it. I afterwards waited on King, and asked him as to whether such a contract had been made by him with the plaintiffs for Mann, and he replied that if any other contract or agreement had been made between the plaintiffs and defendant, other than that set forth in the letter of William T. Smithson, accompanying the $2,100 package, he knew nothing of it, and had nothing to do with it; but Mr. King said that he had been authorized to make another contract with the plaintiffs by Mann, and that he called on Smithson for that purpose, and mentioned it to Smithson, but that Smithson was so exasperated at the rapid return of the plaintiffs' notes, circulated by Mann for redemption, and at Mann's conduct, that he would hear of no further proposals. King also said that he did not deliver Mann's letter to Smithson, which contained the proposals, but brought it with him to Buffalo.

ALEXANDER M. HAMILTON.

UNITED STATES,
Northern District of Illinois, ss.

I, John W. Magill, a commissioner appointed by the circuit court of the United States, in and for the northern district of Illinois, in the seventh circuit, under and by virtue of the acts of Congress, do hereby certify, that the reason for taking the foregoing deposition, and the fact is, that the witness above mentioned resides at Chicago, in the county of Cook, in the northern district aforesaid, more than one hundred miles from Washington city, the place of trial of the aforementioned cause; that no notification of the time and place of taking said deposition was made out and given by me to the adverse party, for the reason that neither he nor his attorney live within one hundred miles of the place of taking said deposition. And I further certify, that on the said fifteenth day of December, A. D. 1856, I was attended by John F. Clements, esq., of counsel for the plaintiffs, and by the witness, at my office, No. 37 Clark street, in said city of Chicago, and district aforesaid, and the said witness being of lawful age and sound mind, and having been by me carefully examined and cautioned, and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence, and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken. I further certify, that I am not of counsel or attorney for either of the parties in the said de-

position and caption named, or in any way interested in the event of the said cause.

In testimony whereof, I have subscribed my name this 15th of December, A. D. 1856.

JNO. W. MAGILL,
U. S. Nor. Dist. of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

I, William H. Bradley, clerk of the circuit court of the United States of America for the northern district of Illinois, seventh circuit, do hereby certify, that I am well acquainted with the handwriting of John W. Magill, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting. And I do further certify, that he was at the time of signing the same a United States commissioner, duly appointed by the circuit court of the United States of America for the northern district of Illinois, seventh circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this 15th day of
[SEAL.] Dec'r, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eighty-first year.

WILLIAM H. BRADLEY, *Clerk.*

Deposition of Alexander M. Hamilton, referred to in Plaintiffs' third Bill of Exceptions, page 38.

Circuit Court of the District of Columbia, for Washington county.

CHARLES W. STATHAM, WM. T. SMITHSON & JAMES G. HAMILTON,
vs.
WILLIAM W. MANN.

UNITED STATES,
Northern District of Illinois, State of Illinois, and County of Cook, ss.

Be it remembered, that on the sixth day of May, A. D. 1856, personally appeared at the office of John F. Clements, esq., No. 3 Marine Bank building, in the city of Chicago, before me, John A. Bross, a commissioner appointed by the circuit court of the United States, in and for the northern district of Illinois, in the seventh circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, etc., Alexander M. Hamilton, to testify and the truth to say, on the part and behalf of the plaintiffs, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the District of Columbia, for Washington county, wherein Charles W. Statham, William T. Smith-

son, and James G. Hamilton, trading under the name of Statham, Smithson & Co., are the plaintiffs, and William W. Mann is defendant. And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

Question 1. State your name, age, and place of residence.

Answer. My name is Alexander M. Hamilton; I am twenty-six years old; I reside in the city of Chicago.

Question 2. Are you acquainted with the plaintiffs and defendant in this case; if so, how long have you known them?

Answer. I am acquainted with the plaintiffs and defendant in this case; I have known the plaintiffs over five years, and the defendant since June, 1853.

Question 3d. Were you at any time during the year 1853 in the employment of the plaintiffs for any purpose? If so, state at what time during the said year you were so employed, and for what purpose you were employed.

Answer. I was employed by the plaintiffs in said year from the beginning of January until the fall; I was employed as an assistant in their banking office at the city of Washington.

Question 4. During your employment in said office, were you at any time cognizant of the fact of the delivery of any amount of money to the defendant in the above cause, or to any one for him? If so, state when such money was so delivered, what amount was so delivered, and to whom the same was so delivered.

Answer. During the time of my employment in said office, I was cognizant of the fact of the delivery of money to David King, to be delivered to the defendant at Buffalo, New York. The said money was so delivered to said King on or about the twenty-fifth day of January, A. D. 1838; the amount so delivered was twenty-one hundred dollars; I have already said it was delivered to David King, to be delivered to the defendant at Buffalo.

Question 5. Have you any personal knowledge as to whether the defendant received the said money, or that the defendant at any time admitted that he had received the same?

Answer. I have no personal knowledge as to whether the defendant received the said money. The defendant admitted to me that he had received the money from David King, at Buffalo, New York.

Question 6. At what time was it that the defendant admitted to you that he received the money?

Answer. He admitted it (that he received the money) in June, 1853.

Question 7. State whether defendant at that time admitted to you that he had received any other amount of money; if so, what amount did he admit that he received from the plaintiffs?

Answer. He acknowledged that he had received subsequently three thousand dollars from the plaintiffs.

Question 8th. Were you in the city of Buffalo in the month of June, A. D. 1853? If so, state in what capacity you went there, and for what purpose.

Answer. I was in Buffalo in June, 1853; I went there as the agent of the plaintiffs to settle their account with the defendant.

Question 9th. State fully what transpired at the time you endeavored to effect such settlement between yourself and said defendant.

Answer. I demanded of him payment of the amount of his indebtedness to the plaintiffs, upon the terms set forth in a certain letter from Mr. Smithson to him, which accompanied the package of twenty-one hundred dollars; he declined, and then assigned as a reason that a subsequent contract had been made by D. C. King, as his agent.

Question 10. Do you know of any other matter or thing that would be of benefit or advantage to the plaintiffs in this suit? If yea, state the same fully and particularly.

Answer. I once proposed to refer the matter to other parties and abide by their decision, which he at first agreed to do, but afterwards declined, and stated that he would only settle on his own terms, which were to exchange receipts. While I was in Buffalo he paid me, in the issues of the "Farmers & Merchants' Bank" of Washington city, six hundred and fifty-seven dollars. In my answers to foregoing interrogatories, where I state that defendant admitted that he had received money from the plaintiffs, I meant to have stated that the said money was the issues of the "Farmers & Merchants' Bank," of Washington city.

ALEXANDER M. HAMILTON.

Sworn and subscribed to this 6th day of May, A. D. 1856, before me.

JOHN A. BROSS,
U. S. Court, Nor. Dist. Ill's.

Circuit Court of the District of Columbia, for Washington county.

CHARLES W. STATHAM, WILLIAM T. SMITHSON, and JAMES G. HAMILTON,
vs.
WILLIAM W. MANN.

UNITED STATES,
Northern District of Illinois, County of Cook and State of Illinois, ss.

I, John A. Bross, a commissioner appointed by the circuit court

of the United States in and for the northern district of Illinois, in the seventh circuit, under and by virtue of the acts of Congress, do hereby certify to the honorable the circuit court of the District of Columbia for Washington county, that the reason for taking the foregoing depositions, and the fact is, that the witness above mentioned resides at Chicago, in the county and State aforesaid, in the northern district of Illinois, more than one hundred miles from Washington city, the place of trial of the above mentioned cause. I further certify that no notification of the time and place of taking said deposition was made out and given by me to the adverse party, because neither he nor his attorney live within one hundred miles of the place of caption. I further certify that on the sixth day of May, A. D. 1856, I was attended by John F. Clements, esq., of counsel for the said plaintiffs, and by the witness, who was of sound mind and lawful age, and the witness having been by me carefully examined and cautioned, and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence; and I have retained the said deposition in my possession, for the purpose of transmitting the same by mail to the court for which the same was taken. I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof, I have subscribed my name and
[SEAL.] affixed my seal, this sixth day of May, A. D. 1856.

JOHN A. BROSS,
United States Commissioner, Northern District of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

I, William H. Bradley, clerk of the circuit court of the United States of America for the northern district of Illinois, seventh circuit, do hereby certify that I am well acquainted with the handwriting of John A. Bross, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the northern district of Illinois, seventh circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this
[SEAL.] sixth day of May, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eightieth year.

WILLIAM H. BRADLEY,
Clerk.

Deposition of Alanson Webster, referred to in Plaintiffs' Bill of Exceptions, page .

UNITED STATES OF AMERICA,
Northern District of New York, County of Erie, ss.

Be it remembered, that on the sixth day of December, in the year of our Lord one thousand eight hundred and fifty-six, at the city of Buffalo, in said county of Erie and northern district of New York, William W. Mann personally appeared before me, James Sheldon, a commissioner appointed and duly authorized under the laws of the United States to take affidavits, depositions, acknowledgments of bail, &c., and made oath that he, the said William W. Mann, was the defendant in a suit then depending in the circuit court for the District of Columbia for Washington county, wherein Charles W. Statham, William T. Smithson and James G. Hamilton were plaintiffs; that the testimony of Alanson Webster, Jesse C. Daun and William O. Brown, all of Buffalo aforesaid, was material and necessary for him the said defendant in the defence of such suit, and that the said witnesses, each of them, then resided and lived at Buffalo city aforesaid, and more than one hundred miles from Washington, in said District of Columbia, where the court at which he, the said defendant, expected the said cause would be tried was appointed by law to be held; that the said plaintiffs and their attorneys and counsel all resided at Washington aforesaid, and more than one hundred miles from Buffalo, aforesaid. And the said William W. Mann requested me that the said several witnesses above named might be examined before me, according to the directions of the act of Congress in such case made and provided. Whereupon I ordered that the said Alanson Webster, Jesse C. Daun and William O. Brown, should be examined de bene esse before me, at my office in Buffalo, aforesaid, on the sixth day of December, 1856, at twelve o'clock noon. And the said William W. Mann appearing before me at the time and place aforesaid, I have therefore proceeded with the said examination.

And the said Alanson Webster being by me carefully examined and cautioned, and by me duly sworn to testify the whole truth, and nothing but the truth, saith:

I reside in the city of Buffalo, county of Erie, and State of New York. My name is Alanson Webster, and I am of the age of forty-six years. I am not acquainted with the plaintiffs in this action; I am acquainted with the defendant, William W. Mann, and have been for the whole of the last nine years, in the city of Buffalo. In the winter or spring of the year 1853 I borrowed some money of the said William W. Mann; it was in the spring of the year 1853.

Question. How much money was it, and of what descripton?

Answer. I think it was eight or nine hundred dollars; and it was in bank bills of the Farmers & Merchants' Bank of Washington city, in the District of Columbia.

Question. Did you give the said William W. Mann your promissory notes for that money?

Answer. I did.

Question. What was the denominations of the bank bills you had of said Mann?

Answer. One's, two's, and three's.

Question. Was that money current in the city of Buffalo?

Answer. No, sir.

Question. What induced you to receive that money as a loan?

Answer. I was doing work on a railroad, and I wanted some money to pay for labor, and the said William W. Mann had money, and offered to loan it to me to give it circulation; and told me it was money current at some banks in Buffalo, which he named, at which they received it on deposit at the same rate as other money of western and southern States. The idea was, that it was equal to Canada money. I went the next day after this conversation and got two hundred dollars of said Mann, and I paid it out to the men I had at work for me. The next day after it was paid out, a portion of it, I cannot say how much, was brought back to me, the men saying they could not get groceries for it; I took it back and paid them other money. The balance of the money that I received of Mr. Mann, I paid out with the understanding that it should be that money, with the exception of about one hundred and seventy-five dollars, which I had kept until it was generally known that the money was good for nothing, having been struck out of Thompson's Detector, and which amount I sold to a broker at seventy-five cents on the dollar. All the money I so received from Mr. Mann as I have stated, I received on the strength of what Mr. Mann said to me in regard to the money and the solvency of the bank, and on his responsibility.

Question. Did you subsequently refuse to pay to said Mann the notes you gave him for the money?

Answer. Yes, sir, on the ground that the money was valueless.

A. WEBSTER.

Sworn to and subscribed before me, at Buffalo aforesaid, this 6th day of December, 1856.

JAS. SHELDON,
United States Commissioner as aforesaid.

Deposition of Jesse C. Daun.

And the said Jesse C. Daun being by me carefully examined and cautioned, and by me duly sworn to testify the whole truth, and nothing but the truth, saith:

I reside in the city of Buffalo, county of Erie, and State of New York; my name is Jesse C. Daun, and I am of the age of fifty

years; my business is banking, and I am the president of the Sackett's Harbor Bank, at Buffalo.

Question. Do you know the plaintiffs and defendant in this action; and if so, how long have you known them or either of them?

Answer. I do not know the plaintiffs or either of them; I do know the defendant, William W. Mann, and have for over twenty-five years.

Question. Did you know of the defendant, William W. Mann, having currency of the Farmers and Merchants' Bank of Washington city, in the District of Columbia?

Answer. I do know of his having bank notes or currency of a bank purporting to be located at Washington, in the District of Columbia, and according to the best of my recollection it was of the Farmers and Merchants' Bank.

Question. Was that currency at that time quoted in Thompson's Detector; and if so, at what rate?

Answer. At the time he first called my attention to that currency it was quoted, according to my best recollection, in that Detector at one per cent. discount; I am quite confident in regard to this.

Question. Did Mr. Mann make any arrangement with you for the receiving of that money on deposit in your bank and paying it out to your customers?

Answer. There was an arrangement made by Mr. Mann with me to receive the money, and I did receive four or five hundred dollars of it.

Question. Did you receive that money under that arrangement upon Mr. Mann's responsibility or upon the credit of the bank?

Answer. I received it entirely upon Mr. Mann's responsibility, and upon his verbal guaranty to protect me against any loss which he fulfilled.

Question. Had the notes of that bank any currency here in Buffalo in consequence of their being quoted in Thompson's Detector?

Answer. I should say that the money had some standing from that fact; but it would not circulate from that fact unless accompanied by Mr. Mann's guaranty to protect it. I would not take it.

Question. What at that time was the standing and reputation of William W. Mann in Buffalo as to character and ability to fulfil his financial undertakings?

Answer. Good and undisputed as far as I knew.

Question. What was the effect upon Mr. Mann's character and financial reputation in the community at Buffalo by the failure of that bank to redeem its notes in New York city and to keep its quotations good in Thompson's Detector?

Answer. By the failure of that bank and its omission to redeem its notes the character and financial reputation of Mr. Mann was seriously damaged in this community. I have been connected with the Sackett's Harbor Bank as cashier and president since the year 1844.

JESSE C. DAUN.

Sworn to and subscribed, at Buffalo aforesaid, this 6 day of December, 1856, before me.

JAS. SHELDON,
United States Commissioner as aforesaid.

And hereupon the further examination of said witnesses was by me duly adjourned and held open until the 8th day of December, at 11 o'clock, and at the same place, at which time and place the said William O. Brown duly appeared before me.

Deposition of William O. Brown.

And the said William O. Brown being by me carefully examined and cautioned, and by me duly sworn to testify the whole truth, and nothing but the truth, saith:

My name is William O. Brown, and I am of the age of forty years and upwards; I reside in the city of Buffalo, Erie county, New York, and am engaged in the business of banking at that place. In the spring of the year 1853 I resided at Buffalo, and was engaged in commerce and produce business. I do not know the plaintiffs or either of them. I do know the defendant, William W. Mann, and have known him for the ten last years past.

Question. Was you in the spring and summer of 1853 engaged in the produce business upon the dock in the city of Buffalo; and in the course of such business state whether you sent large amounts of money and currency to Ohio, Michigan, Illinois, and Wisconsin, for the purchase of produce, flour, &c.?

Answer. I was so engaged at that time, and did send large amounts of money and currency West, particularly to Illinois and Wisconsin, for the purchase of produce, &c.

Question. Do you know of the defendant, William W. Mann, having in his possession money or bank bills purporting to be issued by the Farmers and Merchants' Bank of the city of Washington, in the District of Columbia, in the spring of 1853?

Answer. I did know the fact, and to the best of my knowledge and belief the bills were of the bank described in the question; I am quite confident of it.

Question. Did you loan or borrow from the defendant in this action, William W. Mann, money or bank bills of the description mentioned in the last question, and of what denomination were the bills?

Answer. I did borrow of him the sum of five hundred dollars; they were small notes—fives, tens, and under.

Question. Under what arrangement, if any, was the money loaned by you?

Answer. I believe I was to repay it in forty days, without interest, in money current in Buffalo, and at the time of my loaning the same it was quoted, as I believe, in Thompson's Detector. I am quite confident of the fact.

Question. Did the quotation of said money as bank bills in Thompson's Detector give it currency in the market at Buffalo, N. Y., so that it could be used and circulated? Then, if not, state how it became bankable and useable there, if you have knowledge.

Answer. The quotation of the money gave it standing to some extent, but it could not be used and circulated as money without some other guaranty. My opinion is that it became bankable and useable, as far as it was so, through the personal guaranty of the defendant, William W. Mann. I took the money on his guaranty that it was good.

Question. State if said money or bank bills could be used for the purpose of trade in Buffalo until its quotation was stricken out of Thompson's Detector?

Answer. I do not know in regard to it in the above particulars.

Question. State what amount of said bank bills or money purporting to be issued by the Farmers and Merchants' Bank of the city of Washington you would or could have used under the arrangement between the defendant and yourself, and how much you could have used per month had the quotation of said money been continued in Thompson's Detector?

Answer. I could have used a very large amount, and would have done so if arrangements had been made. I could have used two hundred thousand dollars during the season, and can say it would have been twenty to forty thousand a month.

Question. Do you know of said defendant, William W. Mann, loaning money of the kind referred to to any other person than yourself?

Answer. I heard that he loaned money of that kind to Alanson Webster.

Question. Do you know, or have you been present, when payment of notes held by said defendant, Mann, was refused; and if so, on what ground was payment refused?

Answer. I was present when said Webster refused to pay notes to said Mann given for that kind of money, and he refused on the ground that the money was worthless.

Question. What was the business and financial standing of the defendant, William W. Mann, in Buffalo, N. Y., in the spring and summer of 1853?

Answer. He was engaged in law business, and his business and

financial standing at that time was entirely unexceptionable. He was considered good in all respects.

Question. How was the business, social and financial, standing of said defendant, Mann, affected by his attempt to use said money or bank bills of the Farmers and Merchants' Bank of Washington city, D. C., and the failure of that bank?

Answer. It was seriously damaged in every way in this community.

WM. O. BROWN.

Sworn to and subscribed at Buffalo aforesaid, this 8th day of December, 1856, before me.

JAS. SHELDON,
United States Commissioner as aforesaid.

And I do hereby further certify that the preceding depositions were reduced to writing by me, and signed by the said Alanson Webster, Jesse C. Daun, and William O. Brown, respectively, in my presence, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof, and that I retained the above depositions within my care and custody from the taking thereof until I deposited the same this day in the post office in Buffalo.

Buffalo, Dec'r 8, 1856.

JAS. SHELDON,
United States Commissioner of New York, as aforesaid.

And whereas afterwards, to wit, on the 11th day of December, in the year of our Lord one thousand eight hundred and fifty-eight, the said plaintiffs, by their attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 11th day of Dec'r, 1858.

[SEAL.]

JNO. A. SMITH, *Cl'k.*

Filed 11th February, 1851.